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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| Estate of KAREN COLLIN, Deceased.<br><br>ANDRE COLLIN ,<br><br>Petitioner and Respondent,<br><br>v.<br><br>GREGORY BAKER, as Executor, etc., et al.,<br><br>Objectors and Appellants. | G040949<br><br>(Super. Ct. No. A242619 )<br><br>O P I N I O N |

Appeal from a judgment of the Superior Court of Orange County, Gerald G. Johnston, Judge. Affirmed.

Gregory Alan Baker, in pro. per., for Objector and Appellant Gregory Baker.

No appearance for Objector and Appellant Deborah Baker.

William S. Hulsy for Petitioner and Respondent.

* * *

After Karen Collin (Karen) died, her son, Gregory Baker (Gregory), transferred her principal residence from her trust to himself as beneficiary thereof. Andre Collin (Andre), Karen's husband of 21 years, filed a Probate Code section 850 petition, seeking a community property share of Karen's assets.[1]

The court awarded Andre $243,763.70. Gregory appeals.[2] He asks this court to reweigh the evidence. That is not the function of the appellate court. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531; *Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622.) We affirm.

I

FACTS

Karen was first married to Charles Baker (Charles), father of Gregory. When her marriage to Charles was dissolved, Karen acquired a residential property, certain rental properties, and some cash, in addition to certain other items, as part of a 1983 marital settlement.[3] The residential property was located on Destino in Cerritos.

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[1] Hereafter, we refer to the parties by their first names, as a convenience to the reader. We do not intend this informality to reflect a lack of respect. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

[2] The Law Office of John K. York, by Attorney Celinda Tabucchi, filed a notice of appeal on behalf of each of Gregory and his wife, Deborah Baker (Deborah). Substitutions of attorney were subsequently filed in which Attorney Gregory Alan Baker was substituted as attorney of record for each of himself and Deborah. However, Gregory has filed briefs on behalf of only himself, in propria persona, leaving Deborah unrepresented. Gregory also filed a petition for a writ of supersedeas and a request for stay, to stop a March 23, 2010 sheriff's sale of the Hoover property, title to which was then apparently held by Deborah. Relief was denied.

[3] Interestingly, we observe that while the marital settlement agreement between Karen and Charles was initially drafted to say that the rental property located on Hebe in Norwalk would be deemed to be the separate property of Karen on dissolution, it was interlineated by hand and initialed, to reflect that the property would belong to Karen and "son," namely, Gregory. Gregory does not mention this detail to the court.

On December 12, 1985, Karen married Andre. She remained married to Andre for nearly 21 years, until her death on November 1, 2006. Karen was a secretary prior to her marriage to Andre and continued working as a secretary for two or three years after the marriage. Karen then became a homemaker. Andre worked as a laundry equipment repairman until he became disabled in 1999. Thereafter, he collected social security income. Joseph Collin (Joseph), Andre's father, left a portion of his estate to Andre and Karen. From 1994 to 1997, Andre and Karen received distributions totaling approximately $70,000 from Joseph's trust.

Karen and Andre lived in the Destino home for nearly two decades, from the time of their marriage in 1985 until the property was ultimately sold. While she and Andre still lived there, Karen, on February 17, 2003, transferred the Destino property to herself as trustee of the Karen K. Collin Trust dated February 17, 2003. The Destino home was sold on May 31, 2005. The bulk of the proceeds of the sale was used to purchase a residence on Hoover in Orange, for cash, on June 1, 2005. The remainder of the sale proceeds, approximately $70,000, was deposited into a bank account at Wells Fargo, in the names of Karen and Gregory. Title to the Hoover residence was taken in Karen's name as trustee of her trust. Karen and Andre lived in the Hoover residence together until Karen's death. Andre continued to live there through the time of trial.

Gregory was the successor trustee of Karen's trust and the executor of her will. Following Karen's death, Gregory transferred the Hoover property from the trust to himself as beneficiary thereof.

Andre filed a Probate Code section 850 petition, seeking a $346,000 share of the Hoover property, representing his community property and separate property interests purportedly acquired therein.[4] Gregory, in his capacities as executor of Karen's will and trustee of her trust, and his wife Deborah, each objected to the petition.[5]

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[4] Probate Code section 850 provides in pertinent part, "(a) The following persons may file a petition requesting that the court make an order under this part: [¶] . . . [¶]

The trial became a battle of the accounting experts, each of whom endeavored to prepare an accounting and tracing of assets over a period of more than 15 years, in the face of incomplete financial information. As the court put it: "Each expert examined thousands of pages of incomplete financial documents and prepared spreadsheets to assist the court in understanding their respective assumptions and conclusions. The court found both experts to be professional and credible. However, the value of expert conclusions is useful only if based upon reliable factual data." The court also noted that the experts had come to "widely differing conclusions" in the matter.

In the end, the court awarded Andre $243,763.70, representing his one-half of the community interest accumulated in the Destino property while he and Karen resided there. The judgment says that Gregory, both as executor and as successor trustee,

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(2) The personal representative or any interested person in any of the following cases: [¶] . . . [¶] (C) Where the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another. [¶] . . . [¶] (3) The trustee or any interested person in any of the following cases: [¶] (A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. [¶] . . . [¶] (C)Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust."

[5] The record on appeal does not contain a copy of any written objections. However, the judgment reflects that counsel appeared at trial on behalf of both Gregory and Deborah. In his respondent's brief, Andre says neither Gregory nor Deborah filed an appearance with respect to the Probate Code section 850 petition, although he acknowledges that Gregory was involved in the probate proceedings, in a contest to be named executor. Andre says this court should clarify whether Deborah is properly before the court as an appellant. Andre in essence asks this court to modify the judgment to define Deborah's standing and liability. However, Andre did not file an appeal from the judgment and cannot challenge any purported errors therein. (See *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1438 [appellate court does not address matters from which no appeal taken].)

breached his fiduciary duty to Andre to ensure that Andre received the community property interest owing to him.[6]

II

DISCUSSION

*A. Challenges to Credibility and Weight of Evidence:*

First, Gregory argues that Andre simply was not a credible witness and the court should not have accepted his testimony. This argument is unavailing. We do not reweigh the credibility of witnesses on appeal. (*In re Marriage of Balcof, supra,* 141 Cal.App.4th at p. 1531; *Johnson v. Pratt & Whitney Canada, Inc., supra,* 28 Cal.App.4th at p. 622.)

Second, Gregory challenges the court's statement of decision, for a number of reasons. He says it is internally inconsistent and contrary to the evidence presented.

In terms of particulars, on pages 27 through 33 of his opening brief, Gregory makes the following assertions without citation to the record. He says the statement of decision casts a false light upon him in terms of breaching a fiduciary duty to Andre, because Andre was not a beneficiary of the trust. He also states that Karen's assets were her separate property, either received when her marriage to Charles was dissolved, or traceable to the assets so received. In addition, Gregory maintains that Karen kept all of her separate property assets separate and that Andre's testimony did not demonstrate that a community property interest had been acquired therein. Furthermore, he contends the statement of decision contains erroneous statements about Karen's use of her last name, the number of times Andre had been married, and the number of rental properties Karen sold before she married Andre. Gregory also says the court made erroneous statements about Andre possibly having made a pledge prior to marriage and about the lack of evidence that the marriage was unhappy. Inasmuch as Gregory

[6] The judgment was entered in July 2008. The following month, Gregory transferred the Hoover property to Deborah.

provides no record references in support of the above-referenced points, his arguments concerning them are deemed waived. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.)

According to Gregory, albeit without citation to the record, the court found that Andre was under duress when he signed an interspousal grant deed on May 27, 2005. Gregory attacks this finding on the basis of credibility. He says, again without citation to the record, that Andre claimed he was lying on the hospital room floor when real estate agent Liz Wagner (Wagner) shoved the deed in front of him and demanded that he sign it. Gregory then cites the portion of the record wherein Wagner testified that she had Andre sign the deed when the two of them were at the Destino property. Gregory says Andre engages in outright lies and that, therefore, the court should not have made findings in his favor with respect to the deed. There are two flaws in Gregory's argument. First, most of Gregory's points are unsupported by record references, and as we have stated previously, arguments unsupported by the record are waived. (*Del Real v. City of Riverside, supra,* 95 Cal.App.4th at p. 768.) Second, we do not reweigh the credibility of the witnesses on appeal. The determination of credibility is a matter for the trier of fact. (*Johnson v. Pratt & Whitney Canada, Inc., supra,* 28 Cal.App.4th at p. 622.)

On another point, Gregory says, albeit without citation to the record, that the court found that Karen handled all the finances during the marriage. This is inconsistent, he argues, with the testimony of Andre, who said that he and Karen went to the laundromat together, picked up the coins, and then took them to the bank. Even if it is correct that Karen and Andre jointly picked up the coins and took them to the bank, this is not necessarily inconsistent with a finding that Karen otherwise handled all the financial affairs.

Gregory cites 39 pages of tax records, without pinpoint page references, and says they "show little results from Andre[']s work efforts" and that "Karen also worked with him in their Laundromat business from 1994 until it closed in 1999 . . . ."

Rules of appellate procedure require Gregory to provide specific page references, and we are not required to plow through volumes of paper searching for evidence to support his point. (*Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 166-167; see also *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; *Del Real v. City of Riverside, supra,* 95 Cal.App.4th at p. 768.) However, an overview of those tax records shows that, at least for the period from 1987 through 1996, Andre was identified as self-employed, with business income from a laundry equipment repair company, and Karen was identified as a homemaker. In the year 2000, Andre was listed as disabled and Karen was listed as a caregiver. The appellant's appendix contains incomplete documentation with respect to other years. In short, what information we have gleaned from the tax records shows that Andre did work and that Karen was a homemaker. In any event, tax records showing a modest income do not, standing in isolation, prove that Andre's community property earnings could not have contributed to payments on the marital residence.

In its statement of decision, the court found the testimony of Karen's brother, Arnold Craig Clevenger, to be more persuasive than the testimony of the accountants who testified. The court found Clevenger's "testimony [to be] compelling evidence Karen intended and, in fact, did use community assets on a regular basis to make the loan payments. She would supplement as necessary with her own money when Andre did not bring in enough cash." Gregory attacks Clevenger's testimony, stating it was self-serving and that it was not true that Clevenger and Karen had a close relationship. He also challenges Clevenger's testimony concerning the disposition of monies received from Joseph's trust. However, Gregory provides no record references in support of his assertions. Consequently, they are deemed waived. (*Del Real v. City of Riverside, supra,* 95 Cal.App.4th at p. 768.) Furthermore, it is the province of the trial court to weigh the credibility of the witnesses. (*Johnson v. Pratt & Whitney Canada, Inc., supra,* 28 Cal.App.4th at p. 622.)

In addition to attacking the testimony of Clevenger, Gregory attacks the testimony of certified public accountant John Poortinga, as well as the court's findings concerning Poortinga's testimony. Gregory, without citation to the record, says the court stated that "'Poortinga utilized voluminous financial documents in developing his conclusion.'" Gregory complains that this statement is simply false. Gregory also asserts that Poortinga admitted there were no bank statements, records, or other evidence to support his opinion. In support of this assertion, Gregory cites a sentence from Poortinga's introductory testimony, wherein Poortinga explained that he had to engage in tracing, because the available bank statements and financial records did not cohesively cover the entire period at issue, that is, the period from the 1985 date of marriage to the 2001 date the Destino property was paid off. Even a cursory overview of Poortinga's testimony, however, makes clear that he did indeed review such bank statements, tax records, and other financial documents as were available to support his conclusions, and that he did review volumes of information, as the court found. We simply have no reason to discount the court's findings that each expert "analyzed the same information" consisting of "thousands of pages of incomplete financial documents . . . ."

In attempting to discredit Poortinga's testimony, Gregory also claims: "The joint account shows no mortgage payments, no property taxes and no homeowners insurance was ever paid out." In support of this claim, Gregory cites a one-page bank statement for a joint checking account in the names of "Andre J. Collin or Karen K. Collin as trustee for Craig Cleveng[er]." (Capitalization omitted.) The statement is for the period August 18, 2000 to September 20, 2000 and contains a handwritten note thereon saying: "No house payments [¶] No [house] property taxes [¶] No homeowner ins[.]" (Capitalization omitted.) We are not apprised of the identity of the individual who made the notations upon the bank statement. More importantly, the statement lists check numbers, amounts, and dates paid, but does not identify the parties to whom payments were made. This one annotated bank statement is simply insufficient evidence

to discredit Poortinga's opinion testimony or to support Gregory's assertion that no community property was ever used to make payments on the Destino property.

In its statement of decision, the court found that the testimony of Gregory's witness, certified public accountant James Christensen, was no more compelling than the testimony of Poortinga. Gregory complains that the court discounted Christensen's opinion because Christensen "qualified his opinion based upon the number of assumptions required due to the gaps in reliable records." Gregory also says the court was "confused re Christensen's great 'experience with forensic accounting and asset tracing'[.]" Once again, however, Gregory provides no record references. And once again, we do not consider arguments unsupported by record references (*Del Real v. City of Riverside, supra,* 95 Cal.App.4th at p. 768), and it is up to the trier of fact to weigh the testimony of the witnesses (*Johnson v. Pratt & Whitney Canada, Inc., supra,* 28 Cal.App.4th at p. 622).

Gregory characterizes Christensen's testimony as "confirm[ing] that Karen's different investment and bank accounts show no payments from community funds to her separate property asset[s] or accounts." In support of this characterization, Gregory first cites a portion of Christensen's testimony regarding his calculations with respect to a payoff on certain Azalea property for which there was no closing statement. Second, Gregory cites Christensen's testimony to the effect that he had determined, via tracing, that Karen had used $20,433 of her separate property to pay off the balance of the Destino property loan. Third, he cites Christensen's testimony to the effect that, based upon a review of joint checking account statements for the period June 28, 2002, through February 28, 2004, no community property was used to fund expenditures on Karen's separate property. Finally, Gregory cites a portion of Christensen's testimony wherein he opined that Karen wanted her separate property to remain separate property after she married Andre. All of this testimony added together does not prove that Andre could not have acquired a community property interest in the Destino property during the two

decades he lived there with Karen. However, it does support the conclusion that there were gaps in the records.

*B. Moore-Marsden Calculation:*

Next, Gregory challenges the *Moore-Marsden* calculation. As the court stated in *In re Marriage of Moore* (1980) 28 Cal.3d 366: "Where community funds are used to make payments on property purchased by one of the spouses before marriage 'the rule developed through decisions in California gives to the community a pro tanto community property interest in such property in the ratio that the payments on the purchase price with community funds bear to the payments made with separate funds.' [Citations.]" (*Id.* at pp. 371-372.) "The formula gives recognition to the economic value of any loan proceeds contributed toward the purchase of the property. Where . . . the loan was extended before marriage and was based on separate assets, it is a separate property contribution. The *Moore* court also negated the inclusion of such expenses as loan interest and taxes in the computation . . . . [Citation.]" (*In re Marriage of Marsden* (1982) 130 Cal.App.3d 426, 437.)

In the case before us, the court applied the *Moore-Marsden* rule to conclude that the community acquired an interest in the Destino property, the bulk of the proceeds of which were used to purchase the Hoover property for cash. The statement of decision provides: "Although the court finds Andre made no separate property contributions to pay off the Destino loan, the court is satisfied Karen used community property assets throughout the marriage to pay the Destino loan. Necessarily, the community developed an interest in the home."

The court found that the Destino property was purchased in 1978 for $92,000, with a down payment of $18,400 and a loan of $73,600. It further found that when Karen and Andre married on December 12, 1985, the property was valued at $166,000 and $5,717 in principal had been paid on the loan. In addition, the court found

that as of May 31, 2005, when the Destino property was sold, it was worth $735,000 and a total of $67,883 in principal had been paid on the loan during marriage. Finally, the court concluded that Andre was entitled to $243,763.70 as his one-half share of the community interest acquired in the Destino property during marriage.

Gregory challenges this conclusion on a number of grounds. First, he says Karen's marital dissolution attorney told her to keep her separate property separate and prepared quitclaim deeds for Andre to sign shortly after marriage. He also says that in 1992 Karen and Andre obtained legal advice from Attorney Robert E. Mitchell as to how to keep separate property separate. However, he cites no portion of the record in support of these assertions, so his arguments based on them are waived. (*Del Real v. City of Riverside*, *supra*, 95 Cal.App.4th at p. 768.) Moreover, even assuming Gregory correctly represents the facts, they would not prove that Andre could not have acquired a community interest in the Destino property.

Gregory, again without citation to the record, contends "there is no evidence the community property paid in." However, the court made clear that it relied on Poortinga's tracing and calculations. In his opening brief, Gregory cites no portion of Poortinga's testimony bearing upon tracing and calculations, although he cites a small portion of Poortinga's testimony on the topic in his reply brief. "'It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.' [Citations.] [Gregory's] contention herein 'requires [him] to demonstrate that there is *no* substantial evidence to support the challenged findings.' . . . [Citations.] A recitation of only [his] evidence is not the 'demonstration' contemplated under the above rule. [Citation.] Accordingly, if, as [Gregory] here contend[s], 'some particular issue of fact is not sustained, [he is] required to set forth in [his] brief *all* the material evidence on the point and *not merely [his] own evidence.* Unless this is done the error is deemed to be waived.' . . . [Citations.]" (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; accord, *Myers v. Trendwest Resorts, Inc.*

(2009) 178 Cal.App.4th 735, 749.) Even a cursory overview of Poortinga's testimony makes clear that Gregory has failed to cite all material evidence on the point. His assertion of insufficient evidence is deemed waived.

Gregory also contends the *Moore-Marsden* calculation was erroneous because it failed to include costs of funeral expenses, realtor commissions, closing costs, air conditioning replacement on the Hoover property, and other property repairs. His arguments with respect to these costs are waived, inasmuch as he does not support them with citations to legal authority. (*Roden v. AmerisourceBergen Corp.* (2007) 155 Cal.App.4th 1548, 1575-1576.) Gregory, citing certain opinion testimony of Christensen, also says the calculation failed to give credit for certain payments made from Karen's separate property bank account or for years Gregory claims there was insufficient community income for any community contribution to have been made toward the Destino property mortgage. Gregory's argument fails because the judgment is presumed to be correct and he has declined to cite any of the countervailing opinion testimony of Poortinga. (*Foreman & Clark Corp. v. Fallon*, *supra*, Cal.3d at p. 881; *Myers v. Trendwest Resorts, Inc.*, *supra*, 178 Cal.App.4th at p. 749.)

On pages nine and 10 of his opening brief, Gregory asserts that the court made several math errors in performing the *Moore-Marsden* calculation. He provides no citation to the record, so we could deem his arguments waived without further comment. (*Del Real v. City of Riverside*, *supra*, 95 Cal.App.4th at p. 768.) However, we located on our own the portions of the statement of decision containing the figures Gregory references. Without reciting each computation in the body of this opinion, we need only say it is clear that Gregory misapprehends the nature of the calculations. We see no error in the referenced computations. As for Gregory's less specific charge that "[n]one of the figures comport with an amortization schedule[,]" his argument fails for ambiguity.

Gregory also contends the court erred in calculating the amount of the appreciation in the Destino property on the date it was sold, rather than on the date of

Karen's death or the time of trial. He cites *In re Marriage of Moore, supra,* 28 Cal.3d 366 in support of this argument. However, that case addressed the determination of a community interest in a property that was still held by the wife at the time of trial, not a property sold several years before trial. (*Id.* at p. 370.) Therefore, it is not helpful to Gregory's position.

Switching horses, Gregory refocuses his attention on the value of the Hoover property. He cites Family Code section 2552 for the proposition that the marital residence must be valued as of the date of trial. Section 2552, subdivision (a) provides in pertinent part: "For the purpose of division of the community estate upon dissolution of marriage or legal separation of the parties, . . . the court shall value the assets and liabilities as near as practicable to the time of trial." Gregory cites no authority for the proposition that this statute, applicable in marital dissolution proceedings, governs the valuation of assets in a trust or probate proceeding.

Moreover, even though Gregory's topic heading pertains to the *Moore-Marsden* calculation, Gregory complains that the court erred in valuing the Hoover property. However, the *Moore-Marsden* calculation was applied with respect to the Destino property, not the Hoover property. This would appear to be consistent with the theory of the case, inasmuch as the trial court, in its statement of decision, noted that "[b]oth parties in this action committed significant resources and time toward [the] presentation of experts regarding the nature of property utilized to pay off the Destino home loan." Furthermore, Gregory cites no portion of the record containing a court finding concerning the value of the Hoover property. His argument on this point is deemed waived. (*Del Real v. City of Riverside, supra,* 95 Cal.App.4th at p. 768.)

In addition to failing to make clear arguments with respect to his concerns regarding the significance of the Hoover property in connection with the *Moore-Marsden* calculation, Gregory fails to provide citations to apposite legal authorities to assist in our analysis. For example, he cites no authority, applicable in a postdeath context,

concerning either the tracing of the proceeds of the predeath sale of an asset in which the community had an interest or the date of valuation of any assets purchased with those proceeds. "'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. . . . [E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' [Citation.]" (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523.) Put another way, "[o]ne cannot simply say the court erred, and leave it up to the appellate court to figure out why. ([Citation] [appellate court need not furnish argument or search the record to ascertain whether there is support for appellant's contentions].)" (*Niko v. Foreman, supra,* 144 Cal.App.4th at p. 368.)

To compound matters, Gregory does not provide this court with copies of any pleadings he filed before the conclusion of trial or cite any portion of the reporter's transcript to show what oral arguments he made before the court. Even if we were to hypothesize trial court error based on legal theories Gregory does not articulate, we would not know whether, as Andre asserts, such error was invited error or Gregory otherwise had waived any available arguments. "'It is settled that where a party by his conduct induces the commission of an error, under the doctrine of invited error he is estopped from asserting the alleged error as grounds for reversal.' [Citation.]" (*In re Marriage of Ilas* (1993) 12 Cal.App.4th 1630, 1640.)

It is Gregory's burden, as the appellant, to show reversible error. (*Virtanen v. O'Connell* (2006) 140 Cal.App.4th 688, 710.) We address only the arguments he raises and do not make additional arguments on his behalf. (*Niko v. Foreman, supra,* 144 Cal.App.4th at p. 368.) Having addressed the arguments as he framed them, reviewed the limited portions of the record he cited, and reviewed the few authorities he cited, we conclude Gregory did not meet his burden to demonstrate error. In addition, we are compelled to direct Gregory's attention to *Evans v. Centerstone Development Co., supra,*

134 Cal.App.4th at pages 166-167. He is advised to comply with applicable rules of appellate procedure in presenting his arguments in the future.

In closing, we note that Gregory informs us he filed a new trial motion raising issues pertaining to the *Moore-Marsden* calculation. The court denied the motion. Gregory makes no argument concerning the new trial motion. "'When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary'[.]" (*Estate of Bibb* (2001) 87 Cal.App.4th 461, 470.) In any event, Gregory appeals from the judgment, not from the order denying his new trial motion. Consequently, we do not concern ourselves with the new trial motion.

III

DISPOSITION

The judgment is affirmed. Andre shall recover his costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

O'LEARY, J.